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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,317	01/16/2002	Hieronymus Andriessen	27500-72	6212

9

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EXAMINER
KOSLOW, CAROL M

ART UNIT	PAPER NUMBER
1755	

DATE MAILED: 08/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-9

Office Action Summary	Application No. 10/050,317	Applicant(s) ANDRIESSEN, HIERONYMUS	
	Examiner C. Melissa Koslow	Art Unit 1755	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *30 July 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *1-6 and 8-15* is/are allowed.

6)☒ Claim(s) *7 and 16-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

This action is in response to applicant's amendment of 30 July 2003. The 35 USC 112 rejections over claims 4, 9, 14 and 15 are withdrawn due to applicant's amendment to the claims. The terminal disclaimer filed on 30 July 2003 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of applications 10/054,243 and 10/050667 has been reviewed and is accepted. The terminal disclaimer has been recorded. Accordingly, the obviousness-type double patenting rejections over these applications are withdrawn. Applicant's arguments with respect to the remaining rejections have been fully considered but they are not persuasive.

Claims 7 and 16-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7 and 16 are duplicates of each other. Claims 17, 18, 22 and 23 are duplicates of each other. Claims 19 and 24 are duplicates of each other. Claims 20 and 25 are duplicates of each other. Claims 26 and 28 are duplicates of each other. Claims 27 and 29 are duplicates of each other. The double jet method of precipitating does not distinguish the particles of claims 16 from those of claim 7, the particles of claim 24 from those of claim 19 and the particles of claim 25 from those of claim 20. The double jet method of precipitating and the method of forming the citrate or EDTA complex of Cu(I) does not distinguish the particles of claims 17 from those of claims 18, 22 and 23, the particles of claims 28 from claim 26 and the particles of claim 29 from those of claim 27. Applicant is advised that should claims 7, 17, 19, 20, 26 and 27 be found allowable, claims 16, 18, 22-25, 28 and 29 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so

close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Applicants have not shown that the double jet method of precipitating and the method of forming the citrate or EDTA complex of Cu(I) distinguish the ZnS:Cu particles in claims 16, 18, 22-25, 28 and 29 from those of 7, 17, 19, 20, 26 and 27. The rejection is maintained.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 7 and 16-29 rejected under 35 U.S.C. 103(a) as being unpatentable over Grey et al in view of Fischer.

Grey et al teach ZnS:Cu particles produced by co-precipitation and which can be coated by an anti-agglomeration compound. These particles are used in electroluminescent displays. Fischer shows these displays have the same structure as the claimed thin film inorganic light emitting diode devices. Thus the references suggest thin film inorganic light emitting diode devices comprising a coated layer comprising ZnS:Cu particles produced by co-precipitation and which can be coated by an anti-agglomeration compound. The particles of Grey et al appear to be identical to the ZnS:Cu particles of claims 7 and 16-29, which are product-by-process claims. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product

was made by a different process. *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985). The references suggest the claimed devices.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The fact Grey et al only exemplified producing ZnS:Mn does not mean the patent is enabling only from that compound. A reference is not limited to working examples. *In re Fracalossi* 215 USPQ 569 (CCPA 1982). Compliance with the enablement requirement of 35 U.S.C. 112, first paragraph, does not turn on whether an example is disclosed, but whether the specification describes the invention in such terms that one skilled in the art can make and use the claimed invention is to ensure that the invention is communicated to the interested public in a meaningful way. Since this reference is a U.S. patent, it is presumed valid and thus enabling to produce any of the disclosed compounds, such as ZnS:Cu. Applicant has not presented any facts rebutting the presumption of operatibility. *In re Sasse*, 629 F.2d 675, 207 USPQ 107(CCPA 1980). Fischer was cited showing that the EL displays of Grey et al have the claimed structure. Applicant has not presented any evidence that the displays of Grey et al do not have the structure of the displays taught in column 1, lines 5-45 in Fischer. The rejection is maintained.

Claims 1-6 and 8-15 are allowable over the cited art of record.

There is no teaching or suggestion in the cited art of record of precipitating ZnS:Cu by mixing a zinc salt, a sulfide and a citrate or ETA complex of copper dissolved in several aqueous solutions.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Koslow whose telephone number is (703) 308-3817. The examiner can normally be reached on Monday-Friday from 8:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached at (703) 308-3823.

The fax number for all official communications is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661 or (703) 308-0662.

cmk
August 28, 2003

C. Melissa Koslow
Primary Examiner
Tech. Center 1700